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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Rulemaking to Amend Parts 1, 2,)
21, and 25 of the Commission's)
Rules to Redesignate the 27.5-)
29.5 GHz Frequency Band, to)
Reallocate the 29.5-30.0 GHz)
Frequency Band, to Establish)
Rules and Policies for Local)
Multipoint Distribution)
Service and for Fixed)
Satellite Services)

CC Docket No. 92-297

DOCKET FILE COPY ORIGINAL

To: The Commission

REPLY COMMENTS OF THE INDEPENDENT ALLIANCE

The Independent Alliance ("Alliance") respectfully submits the following Reply Comments in response to Comments filed pursuant to the First Report & Order and Further Notice of Proposed Rulemaking in the above-captioned proceeding, released by the Commission on July 22, 1996 ("NPRM"). In the NPRM, the Commission has requested comments on numerous issues regarding the proposed rules and policies for local multipoint distribution service ("LMDS") and fixed satellite services. The Alliance is specifically concerned about the Commission's consideration of any proposal that would limit the eligibility of rural telephone companies to bid for and/or hold licenses for LMDS. The adoption of a rule incorporating any such constraint would be contrary to both legislative directives and the public interest.

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I. INTRODUCTION

The Alliance is a group of rural telephone companies that share a common interest in ensuring that they have the opportunity to deploy LMDS. The Alliance urges the Commission to adhere to its initial determination that there are no statutory or regulatory requirements that prohibit a LEC from acquiring a LMDS license.¹ Both statutory requirements and public policy objectives support the participation by rural telephone companies in the provision of LMDS. Accordingly, the Alliance respectfully submits that the Commission should adopt rules which will ensure that rural telephone companies are eligible to provide LMDS, and are provided a right of first refusal in negotiations for partitioned spectrum and a right to provide service in unserved areas.

II. CURRENT LAW AND POLICY SUPPORT THE PARTICIPATION OF RURAL TELEPHONE COMPANIES IN AUCTIONS FOR LMDS LICENSES

The Commission determined in the Third NPRM that "there are no statutory or regulatory restrictions that prohibit a local exchange carrier from holding an interest in a . . . LMDS licensee"² The Commission's determination is fully consistent with

¹ In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.5 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, and Suite 12 Group Petition for Pioneer's Preference: Third Notice of Proposed Rulemaking and Supplemental Tentative Decision, CC Docket 92-297, 11 FCC Rcd. 53, 90, ¶100 (released July 28, 1995) ("Third NPRM").

² Id.

Congressional intent that the Commission's system of competitive bidding promote the following objectives:

- 1) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays; and
- 2) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.³

As the emphasized citations indicate specifically, Congress has asserted companion goals: the rapid and comprehensive deployment in rural areas of new and advanced services and technologies, such as those provided by LMDS, and the dissemination of spectrum licenses to rural telephone companies. The adoption by the Commission of rules ensuring the eligibility of rural telephone companies⁴ to deploy LMDS is consistent with both the statutory requirements and the public policy objectives contained therein.

The participation of rural telephone companies in the deployment of LMDS is also supported by the Telecommunications Act of 1996 ("1996 Act"),⁵ which recognizes the vital participation of rural telephone companies in the provision of telecommunications

³ Id. at 101, ¶132, citing the Communications Act of 1934, as amended, 47 U.S.C. § 309(j)(3) ("Communications Act") (emphasis added).

⁴ As defined by 47 U.S.C. § 3(a)(47)(A).

⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996).

services to rural America, and encourages and provides for the continued participation of rural telephone companies.⁶

The eligibility of rural telephone companies to deploy LMDS will ensure that rural subscribers benefit from the full range of broadband wireless services LMDS is poised to provide. The short-range broadband wireless capacity of LMDS will enable rural telephone companies in many instances to avoid the high-cost of deploying cable or fiber to reach rural customers on the "last mile" to provide broadband services. Rural telephone companies have been recognized as among those "uniquely positioned to provide this new service."⁷ LMDS will provide voice, data, two-way video, teleconferencing, telemedicine, telecommuting, and global networks; its capacity will permit the provision of broadband video-on-demand and distance learning.⁸ All of these are services contemplated for inclusion in the evolving definition of universal service provided by the 1996 Act.⁹ As rural telephone companies are, until a state commission designates otherwise, the sole telecommunications carrier eligible within their service areas to receive support for providing universal service,¹⁰ rules that would prevent rural telephone companies from deploying LMDS would be contrary to established public policy and would impede universal service

⁶ See, e.g., 47 U.S.C. §§ 214(e)(2), 251(f).

⁷ Comments of US West at 4.

⁸ NPRM at ¶15.

⁹ 47 U.S.C. § 254(c)(1).

¹⁰ 47 U.S.C. § 214(e)(2).

objectives. The Alliance, therefore, respectfully urges the Commission to enact measures that support and encourage the participation of rural telephone companies in providing LMDS.

The policy and public interest objectives promoted by the participation of rural telephone companies in the deployment of LMDS are grounded in two Congressional proclamations. As noted above, the Communications Act mandates the provision of advanced services in rural areas and the dissemination of spectrum licenses to rural telephone companies.¹¹ The 1996 Act recognizes that the public interest requires special consideration for areas served by rural telephone companies.¹² Even parties opposed to the general participation of incumbent LECs contemplate the participation of rural telephone companies.¹³ Accordingly, instead of considering limitations on the eligibility of rural telephone companies, the Commission should take action that will serve the public interest in a manner consistent with the statutory mandates by enacting rules that promote the participation of the rural telephone companies in the deployment of LMDS.¹⁴

¹¹ See note 3 and accompanying text.

¹² See 47 U.S.C. §§ 214(e)(2), 251(f).

¹³ See Comments of CellularVision USA, Inc. at 14.

¹⁴ In addition to permitting rural telephone companies to participate in auctions of LMDS spectrum, the Commission should also provide a rural telephone company with any and all bidding preferences to which it may be entitled as a small business and/or woman or minority owned business.

III. THE COMMISSION SHOULD ENACT RULES THAT ENCOURAGE AND ENSURE THE PARTICIPATION OF RURAL TELEPHONE COMPANIES

In addition to permitting rural telephone companies to participate in auctions, the Commission should adopt policies to foster the participation of rural telephone companies and the provision of service in rural areas. As noted in Comments filed by other parties, build-out requirements do not guarantee the introduction of LMDS to rural regions.¹⁵ The adoption of rules that will promote the participation of rural telephone companies, therefore, is essential to ensure the introduction of LMDS to rural areas. The BTA-basis on which auctions will be conducted results in the licensing of vast service areas. Licensees will be capable of meeting construction requirements by focusing on more lucrative, densely populated areas, and ignoring rural areas. Accordingly, the Alliance submits that both established public policy and the comments of other parties in response to the NPRM warrant the consideration of specific measures to foster the deployment of LMDS in rural areas by rural telephone companies.

A. RURAL TELEPHONE COMPANIES SHOULD BE GRANTED A RIGHT OF FIRST REFUSAL TO NEGOTIATE FOR PARTITIONED AREAS

The Alliance proposes that the Commission can promote the deployment of LMDS in rural areas by ensuring that a request of a rural telephone company to partition a license should be granted unless the licensee demonstrates a commitment to provide service to the rural area. The introduction of LMDS can be advanced further

¹⁵ Comments of National Telephone Cooperative Association at 2.

by reserving for rural telephone companies a right of first refusal by rural telephone companies to obtain partitioned spectrum in their service areas. This proposal can be implemented and administered easily by requiring the LMDS licensee that proposes to assign a portion of the license by partitioning to verify in the application that the licensee has met the "right of refusal" obligation. The Alliance submits that the institution of an initial right of first refusal for rural telephone companies to partition spectrum would further the goal of the Commission to deploy rapidly in rural areas new technologies, products, and services.¹⁶

In order to encourage LMDS licensees to partition licenses in rural telephone company areas, and thereby promote rural services, coverage provided by a rural telephone company in a rural service area should be attributable to the original LMDS licensee's demonstration of compliance with the overall construction benchmarks for the entire licensed area. To further foster implementation of LMDS in rural areas, the Commission should ensure that the partitioning does not result in unjust enrichment to the partitioning licensee. A partitioning licensee should not be permitted to charge the rural telephone company more than a pro rata share of its winning bid (on a per POP basis) for the partitioned license. It should be noted, however, that the same price for rural POPs as urban POPs may be economically unsound and unjust: there should be no rule that permits spectrum to be held

¹⁶ Third NPRM at 101, ¶132.

economic hostage. Accordingly, the Alliance proposes that the Commission adopt a fill-in policy for LMDS licenses.

B. EFFICIENT UTILIZATION OF THE SPECTRUM REQUIRES THE ADOPTION OF A FILL-IN POLICY FOR LMDS LICENSED AREAS

The Alliance submits that the Commission's goals of deploying LMDS in all areas of the Nation, including rural areas, will be promoted by application to LMDS a "use or lose" fill-in policy similar to that employed in the cellular arena. Specifically, license renewal applications should be confined to only those areas served. Subsequent to the original license period, geographic areas that remain unserved by the initial licensee should be subject to fill-in applications in a manner that is substantially similar to the cellular license Phase 2 process.¹⁷ The Alliance proposes that during the first year that fill-in applications would be accepted for a specific LMDS license, only an existing rural telephone company providing service within the proposed service area should be eligible to apply to provide service in that rural service area. The adoption of these provisions will promote and encourage, in accordance with statutory mandates, the dissemination in rural areas of advanced technologies and the participation of rural telephone companies in the provision of those services.

IV. CONCLUSION

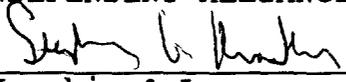
The Commission should ensure that rural telephone companies are accorded the opportunity to obtain licenses for and provide

¹⁷ See 47 C.F.R. § 22.949(b).

LMDS service. The adoption of rules proposed by the Alliance to permit the participation of rural telephone companies in the auctions, provide a right of first refusal, and allow fill-in applications for LMDS service areas will ensure that the Commission can better meet its dual objectives of promoting efficient use of the spectrum and fostering the delivery of LMDS services throughout the Nation.

Respectfully submitted,

THE INDEPENDENT ALLIANCE

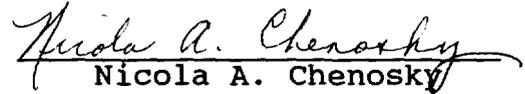
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August 22, 1996

CERTIFICATE OF SERVICE

I, Nicola A. Chenosky, hereby certify that a copy of the foregoing **Reply Comments of The Independent Alliance in CC Docket No. 92-297** was served on this 22nd day of August 1996, by first class, U.S. mail, postage prepaid, to the following parties:


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